

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
JUNE 1, 2004
7:00 P.M.**

ROLLCALL Answering rollcall were Members Housh, Hovland, Masica and Mayor Maetzold. Member Kelly entered the meeting at 7:08 P.M.

CONSENT AGENDA ITEMS APPROVED Motion made by Member Masica and seconded by Member Housh approving the Council Consent Agenda as presented.

Rollcall:

Ayes: Housh, Hovland, Masica, Maetzold

Motion carried.

***MINUTES OF THE REGULAR MEETING OF MAY 18, 2004, APPROVED** Motion made by Member Masica and seconded by Member Housh, approving the Minutes of the Regular Meeting of the Edina City Council for May 18, 2004.

Motion carried on rollcall vote – four ayes.

RESOLUTION NO. 2004-51, ORDERING SOUND WALL MITIGATION IMPROVEMENT FOR WEST SIDE OF TH100 FROM MINNEHAHA CREEK, VERNON AVENUE TO WEST 44TH STREET, IMPROVEMENT PROJECT NO. SA-7 Affidavits of Publication were presented and ordered placed on file.

City Engineer Presentation

Engineer Houle explained the proposed improvement was initiated by staff and would therefore require a four-fifths affirmative vote of the Council to be ordered. He said the project would consist of constructing a sound mitigation wall on the west side of TH100 from Vernon Avenue to Minnehaha Creek. The wall would be twelve feet high until ten feet of the edge of the highway/off-ramp. At that point a ten-foot wall would be extended over Minnehaha Creek. Mr. Houle explained that MnDOT had verbally agreed to construct a ten-foot wall across both sides of the West 44th Street and Minnehaha Avenue Bridges. He added that MnDOT had also agreed to fund the engineering and construction administration costs. Mr. Houle said the local Edina project was proposed to be funded through special assessments from the benefiting properties as authorized by MS429. The project would be constructed in 2005 in conjunction with an MnDOT proposed sound wall north of West 44th Street.

Mr. Houle reported that after conducting a survey of the neighborhood, 32 out of 33 property owners responded indicating they would prefer a sound wall. In addition 27 of the 33 agreed to be assessed for the wall's construction. He stated the estimated project cost was \$393,000, which would be financed through special assessments. Mr. Houle explained there had been a three-tiered per residential equivalent unit formula developed as follows:

| | |
|--------------------------|----------|
| ▪ First Tier Properties | \$17,000 |
| ▪ Second Tier Properties | \$9,500 |
| ▪ Third Tier Properties | \$2,800 |

Mr. Houle showed a graphic depicting the three different tiers and explained the proposed assessments would run for a term of fifteen years with an interest rate of six point five percent. He added if the Council ordered the project the final assessment hearing would be held in August of 2004, with construction occurring in the summer of 2005.

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Member Masica questioned the rationale of the proposed three-tier assessment formula. Mr. Houle responded that properties adjacent to the right-of-way were assessed at the first tier, with those further away, but still receiving some attenuation of noise at the second and third levels. He acknowledged that inclusion, in some cases, was arbitrary.

Member Housh asked how MnDOT determined which projects they would build the schedule of construction. Mr. Houle said MnDOT has a formula that includes density and distance from highway right-of-way, with MnDOT building about four to five walls annually. He said the proposed project had a ranking of twenty with MnDOT, which placed it about ten years out on MnDOT's construction calendar.

Member Hovland congratulated Mr. Houle for getting MnDOT to install and pay for the walls over the bridges. He asked what the bridge walls' design would illustrate and how would the walls be transitioned at their ends. Mr. Houle replied the bridges' walls would be concrete jersey barriers with a ten foot laminate wooden wall on the outside of the barrier to look compatible with the twelve foot wall. Mr. Houle said the final design was not yet determined, but he anticipated the walls would gradually decrease to about six feet over a ten to fifteen foot span.

Member Hovland recalled that the City had participated in the sound wall on McCauley Trail by installing at the City's cost some decorative columns and that there should be a discussion of equal treatment for those in this area. Mr. Houle suggested waiting until the actual costs were more defined since the estimated costs were preliminary numbers. He said the City may need to participate by paying overages and noted the walls were in the 2005 Capital Improvement Budget.

Member Housh asked who would have the responsibility for long-term maintenance of the sound walls. Mr. Houle replied that MnDOT would have responsibility for the long-term maintenance. He pointed out there would be no choice of design for the highway side of the walls.

Mayor Maetzold asked when the citizens could expect to see the assessment on their property tax statements and also if staff could address the sound attenuation expected. Mr. Houle said the assessment could appear on taxes payable in 2005 if the assessment hearing were held in 2004. He stated that after construction there was anticipated to be between three and five decibels lowering of the sound level pressure. This would give a significant reduction in perceptual noise.

Public Comment

Mary Hartupee, 5016 Edinbrook, thanked the Council and staff for initiating this project and urged the Council to order the improvement.

Member Hovland made a motion to close the public hearing seconded by Member Housh.

Ayes: Housh, Hovland, Kelly, Masica, Maetzold

Motion carried.

Member Housh introduced the following resolution and moved its approval:

RESOLUTION NO. 2004-51

ORDERING SOUND WALL IMPROVEMENT - NO. SA-7

WHEREAS, the Edina City Council on the 1ST of June, 2004, fixed a date for a Council hearing on the proposed sound abatement walls, Improvement No. SA-7; and

WHEREAS, fourteen days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon on the 1st day of June 2004, for Improvement No. SA-7 consisting of the construction of a sound wall along the west side of TH100 from Vernon Avenue to Minnehaha Creek.

NOW, THEREFORE, BE IT RESOLVED, that the Council has duly considered the views of all persons interested, and being fully advised of the pertinent facts, does hereby determine to proceed with the construction of said improvement, including all proceedings which may be necessary in eminent domain for the acquisition of necessary easements and rights hereby designated and shall be referred to in all subsequent proceedings as Improvement No. SA-7 consisting of the construction of sound wall along the west side of TH100 from Vernon Avenue to Minnehaha Creek.

BE IT FURTHER RESOLVED that Improvement No. SA-7 consisting of the construction of sound wall along the west side of TH100 from Vernon Avenue to Minnehaha Creek is hereby ordered as proposed.

BE IT FURTHER RESOLVED that the City Engineer is hereby designated as the engineer for this improvement. The engineer shall cause plans and specifications to be prepared for the making of such improvement.

BE IT FURTHER RESOLVED that the City reasonably expects to be reimbursed for part or all of the expenditures made for the improvements approved and ordered hereby from proceeds of bonds or other obligations to be issued by the City. The maximum principal amount of such bonds or other obligations the City currently expects may be issued for such purpose is the estimated cost of the improvements. As of the date hereof, there are no funds of the City reserved, allocated on a long-term basis, or otherwise set aside (or reasonably expected to be reserved, allocated on a long term basis or otherwise set aside) to provide permanent financing for the improvements. This resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof, all within the meaning and intent of Section 1.150-2 of the Income Tax Regulations

Adopted this 1st day of June 2004. Member Hovland seconded the motion.

Rollcall:

Ayes: Housh, Hovland, Kelly, Masica, Maetzold

Motion carried.

RESOLUTION NO. 2004-52 APPROVING SOUND WALL MITIGATION IMPROVEMENT FOR EAST SIDE OF TH100 FROM MINNEHAHA CREEK TO WEST 44TH STREET, IMPROVEMENT PROJECT NO. SA-11 Affidavits of Publication were presented and ordered placed on file.

Member Hovland stated that he lived in the subject area and asked the City Attorney if it would be appropriate for him to participate in the discussion and vote on proposed Improvement No. SA-11. Attorney Gilligan responded that it would be appropriate for him to participate and vote.

City Engineer Presentation

Mr. Houle explained the proposed Improvement No. SA-11 was also initiated by staff and would again require a four-fifths affirmative vote of the Council to be ordered. He said the project would consist of constructing a sound mitigation wall on the east side of TH100 from Minnehaha Creek to West 44th Street. The wall would be twenty feet high and similar in construction to the sound wall constructed north of West 44th Street along TH100. The wall will extend over both the West 44th Street and Minnehaha Creek bridges. The height of the walls across the bridges will be ten feet high. The wall will also extend approximately 100 feet south of the Minnehaha Creek Bridge to the point where MnDOT accesses the Mill Pond for storm sewer maintenance. Mr. Houle explained that MnDOT had verbally agreed to construct a ten-foot wall across both sides of the West 44th Street and Minnehaha Avenue Bridges. He added that MnDOT had also agreed to fund the engineering and construction administration costs. Mr. Houle said the local Edina project was proposed to be funded through special assessments from the benefiting properties as authorized by MS 429. The project would be constructed in 2005 in conjunction with a MnDOT proposed sound wall north of West 44th Street.

Mr. Houle said that in response to an initial neighborhood survey the majority of the residents responding favored a sound wall. At an informational meeting held to discuss the issue, the majority

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of residents attending from the east side of TH100 requested the assessment area be extended to include properties along West and East Sunnyslope Road and also along Browndale Avenue. Mr. Houle stated a new survey was then sent to the additional homes. He reported the new survey combined with the initial area indicated that 29 out of 33 respondents preferred to have a sound wall installed, with 23 out of 33 agreeing to be assessed for the construction of the wall. He stated the estimated project cost was \$400,000, which would be financed through special assessments. Mr. Houle explained there had been a four-tiered per residential equivalent unit formula developed as follows:

| | |
|--------------------------|----------|
| ▪ First Tier Properties | \$18,000 |
| ▪ Second Tier Properties | \$9,500 |
| ▪ Third Tier Properties | \$6,000 |
| ▪ Fourth Tier Properties | \$3,500 |

Mr. Houle showed a graphic depicting the four different tiers and explained the proposed assessments would run for a term of fifteen years with an interest rate of six point five percent. He added if the Council ordered the project the final assessment hearing would be held in August of 2004, with construction occurring in the summer of 2005.

Public Comment

Mayor Maetzold noted receipt of correspondence from Evelyn and Daniel Cousins, 4800 West Sunnyslope Road, stating they believe they will not benefit from the installation of a sound wall, they have not been bothered by noise and were not in favor of the improvement being ordered.

Steve Snyder, 4601 Sunnyside Road, stated he favored the project and appreciated the Engineer and City taking the initiative to get the walls built, especially the walls over the two bridges. Mr. Snyder said he believed they would really enhance the neighborhood. He added he had lived in the neighborhood twenty years and has been trying to get walls built during that time.

Bruce Halvorson, 4903 and 4905 West 44th Street, said he wanted to see his assessment placed at zero, but that he favored building the walls.

Tom Dougherty, 4911 Sunnyside Road, stated he believed he was part of the core committee of support for the walls. Mr. Dougherty said he strongly favored the construction of the walls and that several of his neighbors favored the walls even though they were unable to attend the hearing.

Member Hovland commended the citizens of Edina who do not want to wait for MnDOT and were willing to participate in the project to enhance their neighborhood.

Member Masica made a motion to close the public hearing, seconded by Member Hovland.

Ayes: Housh, Hovland, Kelly, Masica, Maetzold

Motion carried.

Member Hovland introduced the following resolution and moved its adoption:

RESOLUTION NO. 2004-52

ORDERING SOUND WALL IMPROVEMENT - NO. SA-11

WHEREAS, the Edina City Council on the 1st of June, 2004, fixed a date for a Council hearing on the proposed sound abatement walls, Improvement No. SA-11; and

WHEREAS, fourteen days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon on the 1st day of June 2004, for Improvement No. SA-11 consisting of the construction of a sound wall along the east side of TH100 from Minnehaha Creek to West 44th Street.

NOW, THEREFORE, BE IT RESOLVED, that the Council has duly considered the views of all persons interested, and being fully advised of the pertinent facts, does hereby determine to proceed with the construction of said improvement, including all proceedings which may be necessary in eminent domain for the acquisition of necessary easements and rights hereby designated and shall be referred to in all subsequent proceedings as Improvement No. SA-11 consisting of the construction of a sound wall along the east side of TH100 from Minnehaha Creek to West 44th Street.

BE IT FURTHER RESOLVED that Improvement No. SA-11 consisting of the construction of a sound wall along the east side of TH100 from Minnehaha Creek to West 44th Street is hereby ordered as proposed.

BE IT FURTHER RESOLVED that the City Engineer is hereby designated as the engineer for this improvement. The engineer shall cause plans and specifications to be prepared for the making of such improvement.

BE IT FURTHER RESOLVED that the City reasonably expects to be reimbursed for part or all of the expenditures made for the improvements approved and ordered hereby from proceeds of bonds or other obligations to be issued by the City. The maximum principal amount of such bonds or other obligations the City currently expects may be issued for such purpose is the estimated cost of the improvements. As of the date hereof, there are no funds of the City reserved, allocated on a long-term basis, or otherwise set aside (or reasonably expected to be reserved, allocated on a long term basis or otherwise set aside) to provide permanent financing for the improvements. This resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof, all within the meaning and intent of Section 1.150-2 of the Income Tax Regulations

Adopted this 1st day of June 2004. Member Housh seconded the motion.

Rollcall:

Ayes: Housh, Hovland, Kelly, Masica, Maetzold

Motion carried.

RESOLUTION NO. 2004-49 APPROVING ROADWAY IMPROVEMENT - HALIFAX AND GRIMES NEIGHBORHOOD - IMP. NO. A-202 Affidavits of Publication were presented and ordered placed on file.

City Engineer Presentation

Mr. Houle explained a resident petition initiated the proposed project. However, the City's Street Department had also requested the streets be reconstructed due to the poor pavement condition. He stated the project would involve reconstructing existing bituminous pavement, installation of concrete curb and gutter, installation of drain tiles for residential sump pump connections, and repair of utilities as necessary.

Mr. Houle explained this roadway system was originally constructed in 1955 and has had normal maintenance for the last fifty years. He stated that in the past normal maintenance consisted of filling potholes and a thin coating applied periodically. Current maintenance includes sealcoating at approximate seven-year intervals. Mr. Houle said the streets in question have outlived the typical useful life of a roadway of 30-35 years. Using a graphic he showed sections of the deteriorated roadway. He explained the neighborhood had been surveyed regarding curb and gutter, and decorative streetlights. Results of the survey shown below indicate the respondents do not desire decorative streetlights and prefer a bulkhead style curb to a surmountable type.

SURVEY RESULTS

| Curb & Gutter | | Decorative Street Lights | |
|---------------|----|--------------------------|----|
| Yes | No | Yes | No |
| 36 | 13 | 18 | 30 |

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| | |
|----------------|---------|
| B-Head | S-Mount |
| 22 | 14 |
| TOTAL SURVEYED | 84 |
| TOTAL RETURNED | 50 |

Mr. Houle said that as a result of the surveys staff was recommending the bulkhead style curb. He added the bulkhead style curb would provide the best control of water runoff. Bulkhead curb also better defined the roadway while providing protection from snowplow damage to sod during snow removal in the winter.

Over 26 residents attended the May 5, 2004, neighborhood informational meeting. Residents had questions about the type of curb proposed for installation and what utility upgrades were planned. Mr. Houle explained the gas utility company often replaces their mains when a street was reconstructed, but that determination would be up to the gas company.

Mr. Houle commented that during the informational meeting, neighbors indicated there was some cut-through traffic from vehicles avoiding the signal at West 58th and France Avenue. Mr. Houle reported staff analyzed the geometrics of the area to see if the width could be reduced in an effort to deter cut-through traffic. He said Hennepin County indicated they would not allow the width of France Avenue to be reduced because buses, delivery trucks, and emergency vehicles need it for turning. Further, driveway locations on Halifax at West 58th would not allow a reduction in that area. However, there will be reductions in width at the intersection of Grimes Avenue and Grimes Lane as well as at Grimes and Halifax.

Mr. Houle said the estimated project cost was \$557,000, not including any storm sewer or utility upgrades. He noted final utility upgrades would be determined when the project reached final design. Mr. Houle stated that the project would be financed from a special assessment of approximately \$6,800 per residential equivalent unit (REU). He stated this would be an assessment with a ten-year term at six point five percent interest for the street, curb and gutter. However, utility upgrades will be paid out of the appropriate utility fund.

Member Housh asked if roadways currently being constructed were being built to a higher standard than in the past and also if the Capital Improvement Plan has funds budgeted to reflect the replacement and repair of the utilities. Mr. Houle replied this was correct. He also noted that adding curb and gutter to roadways also increased their useful life because it keeps the roadway edges from eroding. Mr. Houle stated the funding for any utility improvements comes from the City's Utility Fund.

Member Masica asked if there was an estimated cost of the proposed storm sewer portion of the project and what its funding source would be. She also asked about the new driveway aprons. Mr. Houle said he had only a rough estimate of \$80,000 to \$100,000, which would come from the Storm Sewer Utility. He stated driveway aprons were proposed at five feet for the width of the existing driveways.

Mayor Maetzold commented that lack of curb and gutter seemed to speed roadway deterioration and asked whether Mr. Houle thought one type of curb was better. Mr. Houle replied that from a maintenance standpoint bulkhead style curb did a better job of directing storm water and aided in preventing sod damage during snow removal. He added it also kept traffic off lawns more effectively.

Public Comment

Chris Gerber, 5923 Halifax said he felt the project should be placed on hold and that the City should resurvey the neighbors. He said he did not realize that the survey taken would be used to make

recommendations. He questioned the City's previous maintenance and asked why property owners should pay if there had been inadequate maintenance. In his opinion, the City should be paying for the entire street, but at the very least there should be full disclosure before any project was ordered.

Scot Armstrong, 5808 Halifax, thanked the staff for moving forward with the project. He stated the streets need to be replaced. Mr. Armstrong circulated a petition in his neighborhood about a year ago. He asked if there could be an option of only replacing the streets at this time. Mr. Houle stated that when streets were reconstructed that was the most efficient and economical time to add curb and gutter. The Council briefly discussed curb and gutter installations and types of curbs.

Robert Boettcher, 5937 Grimes Avenue, stated he felt the neighborhood survey was very clear and he understood exactly what would be done with the results. Mr. Boettcher added that in his opinion the street needed to be built and he urged the Council to order the project.

Brandon Lew, 5808 France Avenue, asked if more storm sewer would be included in the project. Mr. Houle said that drain tile will be added on Grimes and on Halifax a catch basin will be added. Mr. Lew asked why the interest rate charged on the special assessment was at six point five percent. Finance Director Wallin explained the rate was set at two percent over the rate the City paid when they sold bonds. The two percent covered the cost of issuing the bonds. Mr. Gilligan added that charging one to two percent over the bond rate was standard practice for cities.

Ed Luterbach, 5913 Halifax Avenue, stated he was one of the original petition circulators. He said he understood that only option neighbors had was to the type of curb and whether or not neighbors wanted decorative streetlights. Mayor Maetzold commented that surveys have been used to gather information, and then the Council made decisions.

Rick Lovdal, 5933 Halifax Avenue, stated he was generally in favor of the proposed improvement being installed with curb and gutter. However, he expressed concern about utilities being allowed to make spot repairs. Mr. Houle explained that during final design the decision about which utilities need to be replaced would be made. He added that the appropriate utility companies would be informed and has an opportunity to do any necessary work, then a five-year moratorium would be imposed.

Member Hovland asked if the staff felt comfortable with the process followed relative to the neighborhood meeting, survey, and notice. Mr. Houle said in this case he felt more people attended the meeting than normally attended in his experience, so there was a better than typical dissemination of information through the neighbors. He added he had followed the same process as with the Maple Road and White Oaks projects.

Mayor Maetzold asked if the residents desired decorative lighting would it be too late to come forward. Mr. Houle said that with the technologies of directional drilling available residents could come forward at a later date and still be able to get the lights installed.

Member Masica stated she was glad to see a regular schedule for replacement of City streets since many of them have gone beyond their useful life and gotten into deplorable condition. Mayor Maetzold concurred.

Member Housh made a motion closing the public hearing seconded by Member Masica.

Ayes: Housh, Hovland, Kelly, Masica, Maetzold
Motion carried.

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Member Hovland introduced the following resolution and moved its adoption ordering Improvement Project No. A-202 with the bulkhead style curb and gutter as recommended by staff:

RESOLUTION NO. 2004-49

ORDERING ROADWAY IMPROVEMENT - NO. A-202

WHEREAS, the Edina City Council on the 1ST of June, 2004, fixed a date for a Council hearing on the proposed Halifax and Grimes Roadway Improvement No. A-202; and

WHEREAS, fourteen days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon on the 1st day of June 2004, for Improvement No. A-202 consisting of the reconstruction the of neighborhood streets in the Halifax and Grimes neighborhood.

NOW, THEREFORE, BE IT RESOLVED, that the Council has duly considered the views of all persons interested, and being fully advised of the pertinent facts, does hereby determine to proceed with the construction of said improvement, including all proceedings which may be necessary in eminent domain for the acquisition of necessary easements and rights hereby designated and shall be referred to in all subsequent proceedings as Improvement No. A-202 consisting of the reconstruction the of neighborhood streets in the Halifax and Grimes neighborhood.

BE IT FURTHER RESOLVED that Improvement No. A-202 consisting of the reconstruction the of neighborhood streets in the Halifax and Grimes neighborhood is hereby ordered as proposed.

BE IT FURTHER RESOLVED that Improvement No. A-202 shall include bulkhead style curb and gutter.

BE IT FURTHER RESOLVED that the City Engineer is hereby designated as the engineer for this improvement. The engineer shall cause plans and specifications to be prepared for the making of such improvement.

BE IT FURTHER RESOLVED that the City reasonably expects to be reimbursed for part or all of the expenditures made for the improvements approved and ordered hereby from proceeds of bonds or other obligations to be issued by the City. The maximum principal amount of such bonds or other obligations the City currently expects may be issued for such purpose is the estimated cost of the improvements. As of the date hereof, there are no funds of the City reserved, allocated on a long-term basis, or otherwise set aside (or reasonably expected to be reserved, allocated on a long term basis or otherwise set aside) to provide permanent financing for the improvements. This resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof, all within the meaning and intent of Section 1.150-2 of the Income Tax Regulations

Adopted this 1st day of June 2004. Member Masica seconded the motion.

Rollcall:

Ayes: Housh, Hovland, Kelly, Masica, Maetzold

Motion carried.

***HEARING DATE SET OF JUNE 15, 2004, FOR FINAL DEVELOPMENT PLAN - MURPHY AUTOMOTIVE (5354 FRANCE AVENUE) BUILDING EXPANSION AND RENOVATION**

Motion made by Member Masica and seconded by Member Housh setting June 15, 2004, as hearing date for the Final Development Plan for Murphy Automotive - 5354 France Avenue for building expansion and renovation.

Motion carried on rollcall vote - four ayes.

***RESOLUTION NO. 2004-50 APPROVING LOT DIVISION FOR 7302 CLAREDON DRIVE AND 7209 SCHEY DRIVE** Member Masica introduced the following resolution seconded by Member Housh:

**RESOLUTION NO. 2004-50
APPROVING A LOT DIVISION AT
7302 CLAREDON DRIVE AND**

7209 SCHEY DRIVE

WHEREAS, the following described property constitutes one tract of land:

LOT 3, BLOCK 3, SCHEY'S PARK VIEW THIRD ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota.

WHEREAS, the owners have requested the lot division of said tract into separate parcels (herein called "parcels") described as follows:

PARCEL A:

That part of Lot 3, Block 3, SCHEY'S PARK VIEW THIRD ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, lying westerly of a line described as commencing at the southeast corner of said Lot 3; thence South 78 degrees 49 minutes 21 seconds West, assumed bearing, along the southerly line of said Lot 3, a distance of 130.00 feet to the point of beginning of said line to be described; thence North 15 degrees 29 minutes 04 seconds West, a distance of 46.83 feet; thence North 0 degrees 03 minutes 20 seconds West a distance of 75.00 feet to the north line of said Lot 3, and said line there terminating.

PARCEL B:

That part of Lot 3, Block 3, SCHEY'S PARK VIEW THIRD ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, lying easterly of a line described as commencing at the southeast corner of said Lot 3; thence South 78 degrees 49 minutes 21 seconds West, assumed bearing, along the southerly line of said Lot 3, a distance of 130.00 feet to the point of beginning of said line to be described; thence North 15 degrees 29 minutes 04 seconds West, a distance of 46.83 feet; thence North 0 degrees 03 minutes 20 seconds West a distance of 75.00 feet to the north line of said Lot 3, and said line there terminating.

WHEREAS, the requested lot division is authorized under Code Section 810 and it has been determined that compliance with the Subdivision and Zoning Regulations of the City of Edina will create an unnecessary hardship and said newly created Parcels as separate tracts of land do not interfere with the Subdivision and zoning Regulations as contained in the Edina City Code Sections 810 and 850;

NOW, THEREFORE, it is hereby resolved by the City Council of the City of Edina that the conveyance and ownership of the above described tracts of land (PARCEL A and PARCEL B) as separate tracts of land are hereby approved and the requirements and provisions of Code Sections 850 and 810 are hereby waived to allow said division and conveyance thereof as separate tracts of land but only to the extent permitted under Code Sections 810 and 850 subject to the limitations set out in Code Section 850 and said Ordinances are now waived for any other purpose or as to any other provisions thereof, and further subject, however, to the provision that no further subdivision be made of said Parcels unless made in compliance with the pertinent Ordinances of the City of Edina.

Adopted this 1st day of June 2004.

Motion carried on rollcall vote – four ayes.

REPORT PRESENTED ON ARROWHEAD LAKE ADDITION - 6800 INDIAN HILLS ROAD, TWO-LOT SUBDIVISION; STAFF DIRECTED TO PREPARE SUBDIVISION MORATORIUM ORDINANCE FOR CONSIDERATION AT JUNE 15, 2004 MEETING Mayor Maetzold stated that the Council would be taking guidance from the City Attorney and not taking any public comment on this matter.

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Mr. Gilligan reviewed with the Council his report on the proposed subdivision of 6800 Indian Hills Road, the process necessary for enactment of a moratorium on subdivisions, and the submittal received from the proponent for the requested subdivision at 6800 Indian Hills Road. Mr. Gilligan noted that the proponent has submitted a new request for subdivision, which was very similar to the request that had been denied on March 1, 2004. The difference was that the request provided an unusual common lot line between the proposed lots in the plat to avoid a variance from the City's lot width requirement.

Mr. Gilligan stated that City Code set forth guidelines and criteria for evaluating plats and subdivisions. Included within these guidelines have been some subjective standards concerning lot dimensions. He reviewed the guidelines used to include and exclude certain lots and the location of where the measurements were taken. Mr. Gilligan stated he felt comfortable with the measurements as provided by staff.

Member Housh asked whether three lots without street frontage were included or excluded from the measurements when the median values for lot dimensions were gathered. Mr. Gilligan replied that they were excluded using a literal interpretation of the Code.

Mayor Maetzold suggested the Council move on to discuss the potential enactment of a moratorium on subdivisions in single family dwelling lots in R-1 zoning districts. Mr. Gilligan explained the Council had the ability to enact a moratorium on subdivisions for up to one year while it reviews its present subdivision ordinance.

Mr. Gilligan said that MS, Section 462.355, subd. 4 would allow a city to enact an interim ordinance which may regulate, restrict or prohibit any use, development or subdivision if said city were conducting a study or was considering an amendment to its comprehensive plan or zoning or subdivision regulations. The moratorium may not exceed one year from the date of its adoption. Mr. Gilligan recommended that the Council adopt a resolution authorizing a study if it chose to enact a subdivision moratorium. He also recommended that a moratorium not include lot divisions.

Member Housh asked how many R-1 subdivision requests were received within one year. Assistant Planner Aaker replied that not many were received within a year. Member Housh then stated he did not believe there was a need for a moratorium for this issue because of the few subdivision requests.

Member Kelly stated he disagreed that it was not a matter of volume of requests, but rather an issue of what was happening to the large estate lots as a result. He added that there were problems in allowing too many subdivisions to dramatically change the nature of neighborhoods over time.

Member Masica stated she agreed with Member Kelly and added that she felt this issue needed to be studied so that the City Council and Planning Commission both had a clearer picture of Edina's future. She added the issue should be studied community wide to develop policy for guidance into the future.

Member Kelly suggested that lakeshore lots or those over a certain square footage be included in the moratorium.

Member Hovland suggested that he would be more comfortable if the moratorium were imposed on all subdivisions in R-1 zoning districts while a study were completed.

Member Housh stated he disagreed totally with the entire idea of a moratorium on subdivision. He asked the Council to think of what potential unintentional consequences a possible moratorium could

bring about. Member Housh agreed that a study should be done, but urged the Council to rethink the need for any type of moratorium.

Member Kelly reiterated he did not feel the issue was one of volume. He said that the Council had on more than one occasion seen the problems that have arisen from the existing subdivision ordinance.

Mayor Maetzold asked the attorney to outline the options and whether or not a public hearing would be required prior to enacting a moratorium. Mr. Gilligan explained that the council could either take action on the proposed subdivision or it could direct staff to prepare a potential ordinance imposing a moratorium. He added that there was not any requirement for a public hearing.

Member Housh stated he would not support any moratorium. However he would support a study of the issue, and again urged his fellow members to adopt an aggressive timetable for a study, but to not enact a moratorium.

Member Masica stated she would support a moratorium until a study can be done to develop the priorities guiding the City into the future.

Mayor Maetzold indicated his agreement with Member Masica and added that he felt this was the right time to enact the moratorium, adding the community has changed since the subdivision standards were developed.

Member Kelly stated he was prepared to vote on enacting a moratorium. He expressed concern that delay could trigger a rash of subdivision requests.

Member Hovland said that it was evident from the discussion that all stake holders care deeply about Edina. He added that the uncertainty in the ordinance must be put to rest. However, he acknowledged some uneasiness about the application that will be thwarted. He suggested the Council act imposing a Citywide moratorium and to deny the proposed subdivision.

Member Housh stated he has felt more pressure with changing the character of neighborhood when variances have come before the Council for large homes and additions on smaller lots.

Member Masica made a motion directing the City Attorney to prepare an ordinance imposing a moratorium on subdivision of single family dwelling lots in R-1 Zoning Districts to be considered by the City Council at their June 15, 2004, Regular Meeting. Member Kelly seconded the motion.

Ayes: Hovland, Kelly, Masica, Maetzold

Nays: Housh

Motion carried.

***BID AWARDED FOR 20 - IBM THINKPAD LAPTOP COMPUTERS - POLICE DEPARTMENT**

Motion made by Member Masica and seconded by Member Housh for award of bid for 20 - IBM ThinkPad laptop computers for the Police Department to sole bidder IBM Direct under Minnesota state bid WCSA Contract #428000 at \$37,814.95.

Motion carried on rollcall vote - four ayes.

***BID AWARDED FOR TWO DUMP TRUCK BOXES FOR PUBLIC WORKS Motion made by Member Masica and seconded by Member Housh for award of bid for two new snowplow trucks, including hydraulics and snowplow equipment to J-Craft Truck Equipment under State of Minnesota Contract #432640 at \$146,049.84.**

Motion carried on rollcall vote - four ayes.

***XCEL ENERGY LICENSE AGREEMENT FOR OUTDOOR WARNING SIREN APPROVED (POLICE DEPARTMENT)** Motion made by Member Masica and seconded by Member Housh authorizing the Mayor and City Manager to sign the license agreement provided by Xcel Energy allowing the City to install an outdoor warning siren on Xcel property located at 5309 West 70th Street.

Motion carried on rollcall vote – four ayes.

***CONFIRMATION OF CLAIMS PAID** Member Masica made a motion and Member Housh seconded the motion approving payment of the following claims as shown in detail on the Check Register dated May 19, 2004, and consisting of 30 pages: General Fund \$96,661.18; Communications Fund \$252.50; Working Capital Fund \$9,519.56; Construction Fund \$400.00; Art Center Fund \$1,117.50; Golf Dome Fund \$541.59; Aquatic Center Fund \$23,708.33; Golf Course Fund \$23,198.29; Ice Arena Fund \$5,423.79; Edinborough/Centennial Lakes Fund \$8,824.06; Liquor Fund \$149,939.26; Utility Fund \$297,100.89; Storm Sewer Fund \$3,267.06; PSTF Fund \$303.73; TOTAL \$620,257.74; and for approval of payment of claims dated May 25, 2004, and consisting of 32 pages: General Fund \$266,035.79; Communications Fund \$222.53; Working Capital Fund \$3,848.87; Construction Fund \$550.00; Art Center Fund \$20,231.79; Aquatic Center Fund \$5,281.94; Golf Course Fund \$70,098.93; Ice Arena Fund \$122.60; Edinborough/Centennial Lakes Fund \$7,529.30; Liquor Fund \$153,116.68; Utility Fund \$542,353.06; Storm Sewer Fund \$27,304.88; PSTF Fund \$1,300.25; TOTAL \$1,097,996.62.

Motion carried on rollcall vote – four ayes.

RESOLUTION NO. 2004-48 PROPOSING ISSUANCE OF VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS FOR VERNON TERRACE APARTMENT PROJECT – SERIES 2004 Mr. Gilligan explained the City received a request from Bigos-Vernon Terrace LLC (“Bigos”) that the City issue tax-exempt revenue bonds under Minnesota Statutes, Chapter 462C, to refund the City’s Variable Rate Demand Multifamily Mortgage Revenue Refunding Bonds (Vernon Terrace Project), Series 1999 (the “1999 Bonds”). The 1999 Bonds were issued to refinance prior bonds issued by the City that refunded bonds issued to finance the acquisition and construction of Vernon Terrace, the senior housing project located at 5420 Vernon Avenue. The vendee was presently Bigos under a contract for deed entered into in 1993 with respect to Vernon Terrace and upon issuance of the refunding bonds would pay the contract for deed in full and become the fee owner of Vernon Terrace.

Mr. Gilligan elaborated that the bonds were proposed to be issued in the principal amount of \$5,705,000, which was the outstanding amount of the 1999 Bonds and will bear interest at a variable rate. Debt service on the bonds will be payable solely from payments made by Bigos and secured by credit enhancement provided by the Federal Home Loan Mortgage Company. The City will have no liability with the bonds. All expenses will be paid by Bigos and upon issuance of the bonds, will pay the City a fee equal to one half of one percent of the principal amount of the bonds in accordance with the City’s guidelines for issuance of the revenue bonds.

Member Masica questioned if Ohmega Corporation, a non-profit corporation, sold the property to a for-profit corporation, Bigos, has Bigos benefited from the non-profit status of Ohmega Corporation. Peter Cooper, Bond Counsel and Attorney for Ohmega Corporation responded that the status of Ohmega as a non-profit was irrelevant and fortuitous to this transaction. Member Masica asked for a brief history of this sale. Mr. Cooper outlined the history of this transaction.

Member Kelly made a motion closing the public hearing, seconded by Member Hovland.

Ayes: Housh, Hovland, Kelly, Masica, Maetzold

Motion carried.

Member Kelly introduced the following resolution and moved its adoption:

RESOLUTION NO. 2004-48

RESOLUTION AUTHORIZING THE ISSUANCE OF
VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE
REFUNDING BONDS (VERNON TERRACE APARTMENTS
PROJECT) SERIES 2004

BE IT RESOLVED by the City Council (the "Council") of the City of Edina, Minnesota (the "City") as follows:

1. The Council has received a request from Bigos-Vernon Terrace, LLC, a Minnesota limited liability company (the "Company"), the controlling member of which is Ted Bigos, a resident of the State of Minnesota ("Bigos"), that the City undertake to refinance a multifamily rental housing development as herein described pursuant to Minnesota Statutes, Chapter 462A and 462C, as amended (the "Act"), through issuance by the City of its Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Vernon Terrace Apartments Project), Series 2004 in an aggregate principal amount not to exceed \$5,705,000 (the "Bonds"). The Bonds would be issued to refund the City's outstanding Variable Rate Demand Multifamily Mortgage Revenue Refunding Bonds (Vernon Terrace Project), Series 1999 (the "1999 Bonds") which were issued to refund Multifamily Mortgage Revenue Refunding Bonds (Vernon Terrace Project) Series 1990 (the "1990 Bonds") which were issued by the City to refund in part Multifamily Mortgage Revenue Bonds (Vernon Terrace Project) issued by the City and originally dated as of December 1, 1986 (the "Prior Bonds"). The Prior Bonds were in turn issued to refund obligations of the City issued to finance the acquisition, construction and installation of a 146-unit multifamily housing rental project, together with related costs, developed on an approximately 3.5 acre parcel of land located at 5420 Vernon Avenue in the City, commonly known as Vernon Terrace Apartments (the "Project").

2. The Project is required to be reserved for rental in part by persons of low and moderate income, with at least twenty percent (20%) of the units held for occupancy by families or individuals with adjusted income not in excess of eighty percent (80%) of the median family income estimated by the United States Department of Housing and Urban Development for the Minneapolis/St. Paul standard metropolitan statistical area.

3. The fee title to the Project is vested in, and the borrower of the proceeds of the 1999 Bonds is Ohmega Building Corporation, a Minnesota nonprofit corporation ("Ohmega"). The City has been advised that in 1993 Ohmega entered into a contract for deed with Bigos, under which Ohmega sold the Project to Bigos, with Ohmega retaining fee title and remaining as obligor with respect to the 1990 Bonds and subsequently the 1999 Bonds. It is proposed that, in connection with the issuance of the Bonds, Bigos will transfer his interest in the Project to the Company, and the Company will pay and satisfy in full the contract for deed, receive fee title to the Project, assume the obligations of Ohmega with respect to the 1999 Bonds, cause the 1999 Bonds to be refunded, and pay and discharge the 1999 Bonds from the proceeds of the Bonds and other available funds.

4. It is proposed that, pursuant to a Financing Agreement (the "Financing Agreement") to be dated as of June 1, 2004, among the City, the Company, and U.S. Bank National Association, as trustee with respect to the Bonds (the "Trustee"), the City will loan the proceeds of the Bonds to the Company in order to refund the 1999 Bonds. The payments to be made by the Company under the Financing Agreement are required to be sufficient (together with revenues derived from the investment of funds and accounts relating to the Bonds) to pay the principal of, premium, if any, and interest on the Bonds when due. It is further proposed that the City assign its rights under the Financing Agreement (except for certain Unassigned Rights, as defined therein) to the Trustee as security for payment of the Bonds under a Trust Indenture (the "Indenture") to be dated as of June 1, 2004, between the City and the Trustee.

5. It is further proposed by the Company that credit enhancement for the Bonds be provided by the Federal Home Loan Mortgage Corporation ("Freddie Mac"). In connection with such Freddie Mac credit enhancement the Company and other parties intend to enter into certain agreements and arrangements including but not limited to a Bond Mortgage Note, to be dated as of

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June 1, 2004, from the Company to the City and assigned by the City to the Trustee (respectively, the "Bond Mortgage Note" and the "Note Assignment"); a Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement, to be dated as of June 1, 2004, from the Company to the City and assigned by the City to the Trustee (respectively, the "Bond Mortgage" and the "Mortgage Assignment"); a Credit Enhancement Agreement to be dated as of June 1, 2004, between Freddie Mac and the Trustee; and an Intercreditor Agreement, to be dated as of June 1, 2004, among the City, the Trustee and Freddie Mac (the "Intercreditor Agreement").

6. Prior to the date of issuance of the Prior Bonds, the City approved and submitted to the Minnesota Housing Finance Agency ("MHFA") a financing program for the Project as required by Minnesota Statutes, Chapter 462C, and MHFA approved the financing program, and the City has been advised that no new or amended financing program need be submitted to MHFA in connection with the issuance of the Bonds.

7. Forms of the following documents have been submitted to this Council for approval:

- (a) the Financing Agreement;
- (b) the Indenture;
- (c) the Bond Mortgage Note and the Note Assignment;
- (d) the Bond Mortgage, the Mortgage Assignment;
- (e) an Amended and Restated Declaration of Restrictive Covenants (the "Declaration") among the City, the Company, and the Trustee, to be dated as of June 1, 2004;
- (f) the Intercreditor Agreement;
- (g) a Bond Purchase Agreement (the "Bond Purchase Agreement") among the Company, the City, and Piper Jaffray & Co. (the "Underwriter");
- (h) an Official Statement with respect to the Bonds; and
- (i) an Assumption Agreement (the "Assumption Agreement") to be dated as of the date of issuance of the Bonds, among Ohmega, the Company, the City and the Trustee.

8. It is hereby found, determined and declared that:

- (a) the Project described in the Financing Agreement and Indenture referred to above constitutes a multifamily rental housing development authorized by the Act;
- (b) the purpose of the Project is and the effect has been to promote the public welfare by providing additional decent, safe and sanitary rental housing opportunities for low and moderate income persons within the City;
- (c) the Project is located within the City limits;
- (d) the refinancing of the Project, the issuance and sale of the Bonds, the execution and delivery by the City of the Assumption Agreement, the Financing Agreement, the Indenture, the Intercreditor Agreement, the Note Assignment, the Mortgage Assignment, the Declaration and the Bond Purchase Agreement, and the performance of all covenants and agreements of the City contained in the Assumption Agreement, the Financing Agreement, the Indenture, the Intercreditor Agreement, the Declaration and the Bond Purchase Agreement, and of all other acts and things required under the constitution and laws of the State of Minnesota to make the Assumption Agreement, the Financing Agreement, the Indenture, the Intercreditor Agreement, the Declaration and the Bond Purchase Agreement, and the Bonds, valid and binding obligations of the City in accordance with their terms, are authorized by the Act;
- (e) it is desirable that the 1999 Bonds be refunded and that the Bonds be issued by the City upon the terms set forth in the Indenture;
- (f) the payments to be made by the Company under the Financing Agreement are required to be sufficient to provide for the prompt payment of principal

of, premium, if any, and interest on the Bonds issued under the Indenture when due, and the Financing Agreement and Indenture also provide that the Company is required to pay all expenses of the operation and maintenance of the Project, including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the Project premises and payable during the term of the Financing Agreement and Indenture;

- (g) under the provisions of the Act, and as provided in the Financing Agreement and Indenture, the Bonds are not to be payable from or charged upon any funds other than the revenue pledged to the payment thereof; the City is not subject to any liability thereon; no holder of any Bonds shall ever have the right to compel any exercise by the City of its taxing powers to pay any of the Bonds or the interest or premium thereon, or to enforce payment thereof against any property of the City except the interests of the City in the Financing Agreement which have been assigned to the Trustee under the Indenture; and the Bonds shall not constitute a charge, lien or encumbrance, legal or equitable upon any property of the City except the interests of the City in the Financing Agreement which have been assigned to the Trustee under the Indenture;
- (h) on the date hereof this Council has held a public hearing on the issuance of the Bonds pursuant to notice duly published in the official newspaper of the City on May 13, 2004, in accordance with the requirements of Section 147(f) of the Internal Revenue Code of 1986.

9. Subject to the approval of the City Attorney and the provisions of paragraph 13 hereof, the forms of the Assumption Agreement, the Financing Agreement, the Indenture, the Note Assignment, the Mortgage Assignment, the Declaration, the Intercreditor Agreement, and the Bond Purchase Agreement, and exhibits thereto are approved in substantially the form submitted. The Assumption Agreement, the Financing Agreement, the Indenture, the Note Assignment, the Mortgage Assignment, the Intercreditor Agreement and the Bond Purchase Agreement, in substantially the forms submitted, are directed to be executed in the name and on behalf of the City by the Mayor and City Manager. Copies of all of the documents necessary to the transaction herein described shall be delivered, filed and recorded as provided herein and in the Financing Agreement, the Indenture and the Bond Purchase Agreement.

10. The distribution of the Official Statement is hereby authorized and the City hereby authorizes the use of a final Official Statement reflecting the terms of the Bonds approved hereby for the offer and sale of the Bonds. The City has not participated and will not participate in the preparation of the Official Statement and makes no representations either express or implied as to the content or adequacy thereof.

11. The City shall proceed forthwith to issue its Bonds, in the form and upon the terms and conditions set forth in the Indenture. The City Manager, with the approval of the City Attorney, is authorized to establish the final aggregate principal amount of the Bonds, the maturity date or dates and principal amount of each maturity of the Bonds, and the initial interest rate or rates to be borne thereby; provided that the aggregate principal amount of the Bonds shall not exceed \$5,705,000; the final maturity shall be not later than July 1, 2034; the average weighted maturity of the Bonds shall not exceed 120% of the remaining average reasonably expected economic life of the Project as determined by appraisal dated May 17, 2004; and the initial annual interest rate shall not exceed five percent (5.0%) subject to adjustment as provided for in the Indenture. The Mayor and the City Manager are authorized and directed to prepare and execute the Bonds as prescribed in the Indenture and to deliver them to the Trustee for authentication and delivery to the Underwriter.

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12. The Mayor and the City Manager and other officers of the City are authorized and directed to prepare and furnish to the Underwriter and bond counsel certified copies of all proceedings and records of the City relating to the Bonds, and such other affidavits and certificates as may be required to show the facts relating to the legality of the Bonds as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the truth of all statements contained herein.

13. The approval hereby given to the various documents referred to above includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto by the City Attorney and the City officials authorized herein to execute said documents prior to their execution; said City officials are hereby authorized to approve said changes on behalf of the City. The execution of any instrument by the appropriate officer or officers of the City herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof. In the absence of the officers specifically named herein, any of the documents authorized by this resolution to be executed may be executed by a person authorized to act in their absence.

14. This Resolution shall be in full force and effect from and after its passage.

Adopted: June 1, 2004

Member Hovland seconded the motion.

Rollcall:

Ayes: Housh, Hovland, Kelly, Masica, Maetzold

Resolution adopted.

CONCERN OF RESIDENT Kathy Peterson, 6600 Belmore Lane, explained a year ago she contacted the City about keeping two bee hives in her yard and was told there was no prohibition. After receiving the go-ahead from her neighbors she started beekeeping. Recently a Community Service Officer appeared at her door with a complaint and a copy of the ordinance, prohibiting beekeeping and notifying her the bees needed to be removed by June 14, 2004. She suggested following the same process as the City of St. Paul, which allows an application process for an annual permit allowing beekeeping. Ms. Peterson requested the Council amend the Ordinance that prohibits beekeeping and to consider issuance of an annual permit.

Assistant Manager Anderson noted that when City Ordinances were codified, the section was included in the animal control portion of the ordinance. He added under Section 850 of the City Code bee keeping would be a prohibited home occupation and suggested departments that might need to study this request would be the Police, Health and Planning Departments.

Mr. Gilligan stated that an extension of the June 14, 2004, deadline could be granted. He said there were two items that need consideration, 1) the ordinance does not permit beekeeping and 2) home occupation.

Following a brief Council discussion, consensus was to uphold the June 14, 2004, deadline for removal of the bees.

No formal Council action was taken.

There being no further business on the Council Agenda, Mayor Maetzold declared the meeting adjourned at 9:15 P.M.

City Clerk